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Message Text

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ORIGIN L-03

INFO OCT-01 ISO-00 ARA-10 HA-05 CIAE-00 DODE-00
NSAE-00 NSCE-00 SSO-00 ICAE-00 INRE-00 PM-05 H-01
INR-10 PA-01 SP-02 SS-15 IO-13 TRSE-00 AID-05
/071 R

DRAFTED BY L/ARA:USOAS:FARMSTRONG:CH
APPROVED BY ARA:JBUSHNELL
USOAS:ITRAGEN
HA:MSCHNEIDER
S/P:RFEINBURG
----------120553 172001Z /62
O 171839Z JUN 78 ZFF4
FM SECSTATE WASHDC
TO AMEMBASSY SAN JOSE NIACT IMMEDIATE

C O N F I D E N T I A L STATE 154990

E.O. 11652: GDS

TAGS: SHUM, OAS, CS

SUBJECT:HUMAN RIGHTS: COOPERATION WITH GOCR IN
VIII OASGA
REF: SAN JOSE 2583

1. FROM A REVIEW OF THE DRAFT RESOLTUION PROPOSED BY THE GOCR DESIGNED TO CLARIFY THE STATUS OF THE IAHRC (REFTEL), WE BELIVE FOREIGN MINISTRY HAS NOT YET CLEARLY FOCUSED ON THE PROBLEM SAN JO PACT RAISES FOR CURRENT IAHRC. OUR MAIN CONCERN IS TO CLAIRFY THE EFFECT OF ARTICLE 150 OF THE OAS CHARTER ON THE EXISTING IAHRC. SHOULD IT OR SHOULD IT NOT HAVE THE EFFECT OF TERMINATING THE MANDATE OF THE EXISTING COMMISSION UPON THE ENTRY INTO FORCE OF THE PACT OF SAN JOSE? THE USG, OTHER CONCERNED GOVERNMENTS AND
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MEMBERS OF THE COMMISION ITSELF ARE ANXIOUS TO ENSURE THAT ARTICLE 150 DOES NOT TERMINATE CURRENT IAHRC MANDATE.

2. THOSE WHO SAY THAT ARTICLE 150 WHOULD BE READ AS TERMINATING THE MANDATE OF THE EXISTING IAHRC UPON ENTRY INTO FORCE OF THE PACT OF SAN JOSE WOULD HAVE

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THE COMMISSION CEASE TO EXIST ON THAT DATE SO THAT
AN ENTIRELY NEW COMMISSION COULD LATER BE CREATED
IN ITS PLACE. THE PRESENT COMMISSION THUS WOULD
CEASE TO EXIST AND A HIATUS WOULD BE CREATED -- FOR
AS LONG AS SIXTEEN MONTHS. THIS INTERPRETATION TQLD
ALSO ALLOW FOR THE POSSIBILITY OF SIGNIFICANT CURTAIL-
MENT OF THE NEW IAHRC'S POWERS BECAUSE IT WOULD PERMIT
WHOLESALE REDRAFTING OF THE COMMISSION"S STATUTE AD
REGULATIONS. THOSE WHO SAY THAT ARTICLE 150 SHOULD
NOT BE READ AS TERMINATING THE PRESENT IAHRC'S
MANDATE ARGUE THAT THE ENTRY INTO FORCE OF THE PACT
OF SAN JOSE SHOULD MERELY REQUIRE THE ELECTION OF
AN ENTIRELY NEW SLATE OF COMMISSIONERS AT THE FIRST
GENERAL ASSEMBTY FOLLOWING ENTRY INTO FORCE (IN
ACCORDANCE WTH ART. 79 OF THE PACT OF SAN JOSE),
I.E., THAT IT IS A CONTINUING COMMISSION WITH THE
PRESNT COMMISSIONERS REMAINING IN OFFICE UNTIL THEY
CAN TRANSFER THEIR POWERS DRECTLY TO THIER SUCCESSORS.
THIS INTERPRETATION ALLOWS THE IAHRC TO RETAIN ITS
COMPETENCE WITH RESPECT TO ALL MEMBERS OF THE OAS
EVEN IF THEY HAVE NOT SIGNED THE PACT OF SAN JOSE.
IT WOULD ENSRE THERE COULD BE NO BACKSLIDING FROM
THE COMMISSION"S STANDARDS OR ITS BASIC AUTHORITY.

3. THE SOLUTION TO THIS DEBAT OFFERED BY THE GOCR --
THE ESTABLISMENT OF A NEW COMMISSION ALONGSIDE THE
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EXISTING ONE -- WOULD COMPLICATE RATHER THAN CLARIFY
THE MANDATE OF THE EXISTING COMMISSION. IT WOULD
ACCEPT THE FIRST (OR, FROM A HUMAN RIGHTS STANDPOINT,
DANGEROUS) READING OF ARTICLE 150 AND, WHILE IT OFFERS
A WAY OF MAINTAINING SCRUTING OVER THE HUMAN RIGHTS
PRACTICES OF ALL OAS MEMBER STATES, IT WOULD DO SO
IN A WAY WHICH WOULD CAUSE UBSTANTIAL DUPLICATION
OF EFFORT AND GREATLY CONFUE THE ADMINISTRATION OF
HUMAN RIGHTS STANDARDS IN THE HEMISPHERE.

4. FYI: WE UNDERSTAND THAT THE IARC HAS PREPRED
A STUDY AND DRAFTED A MORE AMBITIOUS RESOLUTION ALONG
THESE LINES FOR PRESETATION AT THE GA. WE EXPECT
TO RECEIVE A COPY ON MONDAY, JUNE 19, AND WE WILL BE
IN TOUCH WITH THE COSTA RICAN EMBASSY TO COORDINATE
POSITIONS. MEANTIME, WE WOULD LIKE YOU TO DISCUSS
WITH FONMIN FORGOING AND DRAFT RESOLUTIONS THAT
FOLLOWS IN EFFORT TO BRING HIM TO BETTER
UNDERSTANDING OF THIS ADMITTEDLY COMPLEX ISSUE.
END FYI.

5. QUOTE. THE GENRAL ASSEMBLY, CONSIDERING: THAT

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EIGHT STATES HAVE NOW RATIFIED THE AMERICAN CONVENION
ON HUMAN RIGHTS, ALSO KNOWN AS THE PACT OF SAN JOSE,
AND THAT ITS ENTRY INTO FORCE APPEARS IMMINENT;
THAT THE GOVERNMENT OF COSTA RICA, HOST TO THE
CONVENTION WHICH DRAFTED THIS AGREEMENT AD ITS FIRST
ADHERENT, HAS ASKED THE ASSEMBLY TO CLARIFY THE MANNER
OF TRANSITION BETWEEN THE EXISTING INTER-AMERICAN
COMMISSION ON HUMAN RIGHTS AND THE COMMISSION WHICH
WILL BE ELECTED PURSUANT TO ARTICLES 79 AND 80 OF
THE PACT OF SAN JOSE:

RESOLVES: TO AFFIRM THAT INCUMBENT MEMBERS OF
THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS AT
THE TIME OF THE ENTRY TNTO FORCE OF THE PACT OF
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SAN JOSE SHALL CONTINUE TO SERVE IN THAT CAPACITY,
WITH THE POWERS SPECIFIED IN THEIR CURRENT STATUTE
AND REGULATIONS, UNTIL THEIR SUCCESSORS ARE ELECTED
PURSUANT TO ARTICLES 79 AND 80 OF THE PACT OF SAN
JOSE. THEIR SUCESSORS LIKEWISE SHALL OPERATE UNDER
THE CURRENT STATUTES AD REGULATIONS OF THE INTER-
AMERICAN COMMISSION ON HUMAN RIGHTS UNTIL NEW ONES
ARE ADOPTED WHICH WILL ENCOMPASS THEIR GREATER
RESPONSIBILITIES UNDER THE PACT OF SAN JOSE. HOWEVER,
THE CURRENT STATUTE AND REGULATIONS SHALL CONTINUE
IN FORCE WITH RESPECT TO NON-SIGNATORIES OF THE
PACT OF SAN JOSE. UNQUOTE.

6. DEPARTMENT HOPES EMBASSY WILL BE ABLE TO BRING
THESE QUESTIONS TO FORMIN CALDERON FOURNIER'S ATTENTION
PRIOR TO HIS DEPARTURE FOR WASHINGTON ON MONDAY.
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